

## **SUBCHAPTER H : INTERIM REIMBURSEMENT PROGRAM**

### **§334.301. Applicability of this Subchapter.**

(a) Authorization for reimbursement. This subchapter authorizes the reimbursement of the expenses of corrective action taken in response to a release of:

- (1) petroleum products from a petroleum storage tank;
- (2) hydraulic fluid and other substances from a hydraulic lift system located at a vehicle service and fueling facility; and
- (3) spent oil and other substances from spent oil tanks located at a vehicle service and fueling facility, provided that the tank listed under this subsection is also subject to regulation under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(b) Deadline for commencing corrective action. This subchapter applies only under the following conditions:

- (1) the confirmed release or releases which necessitated the corrective action were reported to the executive director on or before December 22, 1998; and
- (2) the release is confirmed by the executive director.

(c) Expenses considered for payment - time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the commission on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not subject to reimbursement or payment. No expenses for corrective action will be reimbursed on or after September 1, 2001.

(d) Expenses covered by House Bill 1214 not covered by prior law. Subject to the other requirements of this subchapter, expenses for corrective action covered by House Bill 1214, but which were not allowable under prior law, may be subject to reimbursement. In order to process applications for new expenses allowed under House Bill 1214, the executive director may prescribe applications and processing procedures for claims relating to expenses which were not allowable prior to June 16, 1991, consistent with the following guidelines:

- (1) the procedures shall allow for the most expeditious processing possible for all types of applications, new and old; and also

(2) the procedures shall be consistent with sound management of the petroleum storage tank remediation fund.

(e) Limitation. This subchapter shall not be construed to authorize reimbursement or payment from the petroleum storage tank remediation fund in situations other than those described in subsection (a) of this section.

(f) Eligibility under other rules. An owner or operator of a petroleum storage tank who is not subject to this subchapter or who does not qualify as an eligible owner or operator under this subchapter is not automatically precluded from qualifying under any other rules which the commission may adopt to implement House Bill 1588, however:

(1) any person seeking reimbursement or assistance under this subchapter must meet the requirements of this subchapter; and

(2) any person seeking reimbursement or assistance under any other rules which the commission may adopt must meet the requirements of those rules.

(g) Operative date for this subchapter. This subchapter applies as follows.

(1) This subchapter authorizes applications for payment from the petroleum storage tank remediation fund to be filed and processed pursuant to its terms on and after July 17, 1990, and ratifies any actions relating to filing and processing applications taken in accordance with this subchapter.

(2) This subchapter authorizes the executive director to make payments pursuant to its terms from the petroleum storage tank remediation fund on and after July 17, 1990, and ratifies any payments made in accordance with this subchapter.

(3) All costs incurred in the course of performing corrective action which are incurred on or after September 1, 1987, will be subject to the terms of this subchapter for the purposes of determining whether those costs are allowable. Nothing in this paragraph shall be construed to invalidate payments made by the executive director under prior rules of the commission.

(h) If any section, subsection, paragraph, subparagraph, clause, or subclause of this subchapter is held invalid, such invalidity shall not affect any other section, subsection, paragraph, subparagraph, clause, or subclause which can be given effect without the invalid provision, and to this end the provisions of this subchapter are declared to be severable.

(i) Priorities for reimbursement applications to be processed during the 1994-1995 biennium pursuant to Senate Bill 1243. The following provisions apply to the priority payment process for reimbursement applications which is set forth in paragraph (5) of this subsection.

(1) Applications within the priority system will be processed in accordance with the number of tanks owned or operated by the applicant, and further prioritized, as necessary, based upon the date the application is received by the executive director.

(2) Only those applications received prior to September 1, 1993, shall be eligible for payment under this subsection.

(3) The executive director may reimburse applicants within a priority category within the priority system under paragraph (5) of this subsection if there are insufficient funds to complete the priority category, on a pro rata basis.

(4) Applications to be processed with Priority 4 applications.

(A) Regardless of the number of tanks owned or operated, applications from the following shall be processed with Priority 4 applications:

(i) entities (other than municipalities and local government entities) which have satisfied or can satisfy the criteria set forth in §334.95 of this title (relating to the Financial Test of Self-Insurance) for owners and operators of underground storage tanks; and

(ii) state and federal entities.

(B) Information on satisfaction of self-insurance requirements shall be provided by authorized representatives of applicants by the deadline set forth in the executive director's letter requesting certification of same. The executive director may request additional information, as necessary, to support the certification. Failure to submit the certification form or any additional requested information by the stated deadline may result in an application being processed as a Priority 4 application.

(C) Notwithstanding the provisions of subparagraph (A) of this paragraph, entities which satisfy the criteria for self-insurance pursuant to subparagraph (B) of this paragraph and are non-profit entities shall be reimbursed under Priority 3 as described in paragraph (5)(C) of this subsection.

(D) Information on entities' non-profit status shall be provided by authorized representatives of applicants by the deadline set forth in the executive director's letter requesting the certification. The executive director may request additional information, as necessary, to support the certification. Failure to submit the certification form or any additional requested information by the stated deadline may result in an application being processed as a Priority 4 application.

(5) Priority system. Subject to the conditions set forth in paragraphs (1)-(4) of this subsection, all applications received will be processed in accordance with the following:

(A) Priority 1 - Applications received from applicants who own or operate less than 13 tanks;

(B) Priority 2 - Applications submitted by applicants who own or operate between 13 and 99 tanks;

(C) Priority 3 - Applications submitted by applicants who own or operate between 100 and 999 tanks; and

(D) Priority 4 - Applications submitted by applicants who own or operate 1000 tanks or more.

(j) Suspending payments from the petroleum storage tank remediation fund. The executive director may suspend payments from the fund, in whole or in part, as necessary to preserve the viability of the fund.

(k) Effective September 1, 1995, the executive director shall consider and process a claim by an eligible owner or operator for reimbursement from the petroleum storage tank remediation fund in the order in which it is received, with the following provisions.

(1) The executive director shall consider and process all claims by eligible owners and operators for reimbursement from the fund that were received before September 1, 1995, before the executive director considers a claim received after that date.

(2) The executive director may not consider, process, or pay a claim for reimbursement from the petroleum storage tank remediation fund for corrective action work begun after September 1, 1993, and without prior approval until all claims for reimbursement for preapproved corrective action work have been considered, processed, and paid.

Adopted October 11, 1995

Effective November 8, 1995

**§334.302. General Conditions and Limitations Regarding Reimbursement.**

(a) In order to be considered for reimbursement under this subchapter, corrective action must be performed either as provided in subsection (b) of this section or in response to a release which:

(1) results in contamination which penetrates beyond the excavation zone of the tank system and which is above action levels determined by the executive director;

(2) is ultimately confirmed by the executive director, either before or after corrective action commences, provided that it shall be the burden of the person claiming monies under this subchapter to show both that a release which is eligible for reimbursement occurred and the expenses claimed are allowable and reimbursable; and

(3) the confirmed release was initially discovered and reported to the commission on or before December 22, 1998.

(b) Subsection (a) of this section does not apply if the corrective action is specifically required by an order of the commission, or a written request or confirmation by the executive director, and the release was initially discovered and reported to the commission on or before December 22, 1998.

(c) No payments shall be made by the commission under this subchapter for:

(1) the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution), which the executive director may apportion in the case of multiple claimants as provided in §334.314(f) of this title (relating to Executive Director's Fund Payment Report);

(2) any expenses for corrective action which exceed \$1 million per occurrence;

(3) any expenses relating to compensation for bodily injury or property damage;

(4) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; or

(5) any expenses of corrective action on or after September 1, 2001.

(d) No expenses for which reimbursement is claimed under this subchapter and no expenses which are to be applied to the owner/operator contribution shall be subject to reimbursement or applied to the owner/operator contribution unless the following conditions have been met.

(1) An application for reimbursement must be filed by the owner or operator of a petroleum storage tank or his duly authorized representative, as required by §334.304 of this title (relating to Who May File Application - Interim Period).

(2) Unless otherwise approved by the executive director, a certification affidavit as provided in the application for reimbursement must be signed by all of the following: owner or operator of a petroleum storage tank, the application preparer, and the prime contractor and/or the prime corrective action specialist, as defined in §334.322 of this title (relating to Subchapter H Definitions).

(3) The application has been filed within the time prescribed in §334.303 of this title (relating to Time to File Application - Interim Period).

(4) The person seeking reimbursement must be an eligible owner or operator, as defined in §334.322 and §334.310 of this title (relating to Subchapter H Definitions and Requirements for Eligibility - Interim Period) or they must be authorized by an eligible owner or eligible operator to receive such payment pursuant to subsections (i)-(k) of this section.

(5) The expenses for which reimbursement is sought, and those which are to be applied to the owner/operator contribution must be allowable costs, as defined in §334.308 of this title (relating to Allowable Costs -Interim Period).

(6) The allowable costs for which reimbursement is sought and those which are to be applied to the owner/operator contribution must be reimbursable, as defined in §334.309 of this title (relating to Reimbursable Costs-Interim Period).

(7) An application for reimbursement has been filed in accordance with this subchapter which contains the information required by this subchapter.

(e) For purposes of this subchapter only, the persons listed in §334.310 of this title (relating to Requirements for Eligibility - Interim Period) may be eligible owners or operators, provided that they meet the other criteria prescribed by this subchapter.

(f) All claims for assistance and reimbursement filed under this subchapter are subject to the availability of funds in the petroleum storage tank remediation fund.

(g) Nothing in this subchapter shall affect the liability or responsibility of an owner or operator of an underground or aboveground storage tank to take corrective action in response to a release pursuant to applicable law.

(h) Nothing in this subchapter shall be construed to create an entitlement to monies in the petroleum storage tank remediation fund or any other fund, and the commission reserves the right to amend or repeal without limitation any of the provisions of this subchapter, including provisions regarding eligibility and allowable costs.

(i) Payment made to persons other than the eligible owner or operator may only be made subject to subsections (j) and (k) of this section and may only be made to agents or assignees duly authorized to receive payment on behalf of an eligible owner or operator.

(j) Authorization for an agent or assignee to receive payment on behalf of an eligible owner or operator must be in writing and signed by the eligible owner or operator who is requesting payment. The authorization must clearly describe what funds the agent or assignee is authorized to receive. If the executive director determines that the authorization is not clear as to the disposition of funds to which the eligible owner or operator is entitled, the executive director may withhold payment and request written clarification from the eligible owner or operator. The executive director may limit the number of agents or assignees who may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the executive director pursuant to this section, neither the State of Texas, the commission, nor its employees shall be responsible for insuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the agent requesting payment to insure that the executive director is supplied with information sufficient to make the proper payments. The right to receive payment under these rules is not

transferable for any purpose and only the people authorized to receive payment under this section are entitled to do so.

(k) No payment of funds will be made to any person other than the owner or operator under this subchapter except as follows:

(1) the person authorized to accept payment on behalf of an owner or operator is:

(A) a purchaser of the property where the release occurred and on which the claim for payment is based;

(B) a person who holds a security interest in personal property or in fixture that is not attached to the real estate or lienhold interest on the real estate or fixture that is attached to the real estate where the release occurred and on which the claim for payment is based;

(C) a person who has insured the owner or operator of petroleum storage tanks for pollution liability on or after July 17, 1990, and who has paid claims on that policy for remediation costs for which the tank owner may be reimbursed under this subchapter; or

(D) any other person who holds legal or equitable title to the property where the release occurred and on which the claim for payment is based; and

(2) the type of ownership interest required under paragraph (1)(A), (B), and (D) of this subsection is an interest in the surface estate of the property.

(l) The executive director may require the execution of a contract of subrogation prior to the disbursement of payment.

Adopted October 11, 1995

Effective November 8, 1995

**§334.303. Time to File Application.**

(a) An application for reimbursement under this subchapter must be filed.

(b) No expenses are allowable for reimbursement under this subchapter unless an application for reimbursement is filed.

Adopted October 11, 1995

Effective November 8, 1995

**§334.304. Who May File Application.**

Only the following persons may file an application for reimbursement under this subchapter:

(1) the eligible owner of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(2) the eligible operator of a tank from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(3) an owner or operator ordered by the commission or required in a written corrective action directive by the executive director on or after September 1, 1987, to assess the nature and extent of contamination in cases where no release is discovered, or the duly authorized agent of such owner or operator; or

(4) a past owner or operator who, in response to a release, performed corrective action on or after September 1, 1987.

Adopted October 11, 1995

Effective November 8, 1995

**§334.305. Where and How Documents Must be Filed.**

(a) Any application for reimbursement or claim for payment filed pursuant to this subchapter shall be filed as follows:

(1) the original application, plus any fees and registration information required pursuant to §334.310(a) of this title (relating to Requirements for Eligibility) submitted to: Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, Attention: Petroleum Storage Tank Division, Reimbursement Section; and

(2) one complete copy of the application and attachments submitted to the Texas Natural Resource Conservation Commission Regional Office in the region where the tanks covered by the application are located.

(b) All documents to be filed under this subchapter shall be filed with the executive director using one of the following:

(1) certified mail, return receipt requested;

(2) express mail or other overnight delivery service, return receipt requested;

(3) hand delivered to the appropriate offices; or

(4) any other method approved by the executive director.

(c) The date of filing of any document required to be filed with the executive director under this subchapter shall be the date postmarked on the return receipt in the case of mailing or courier



services, and the receipt date stamped on the document by the executive director in the case of hand delivery.

(d) The date of filing documents with the chief clerk or the commission on protested claims for payment shall be controlled by this subchapter and the procedural rules of the commission.

Adopted October 11, 1995

Effective November 8, 1995

**§334.306. Form and Contents of Application.**

(a) An application for reimbursement filed pursuant to this subchapter shall be on a form approved or provided by the executive director.

(b) The application shall contain the following:

(1) the name, address, telephone number, and signature of all of the following: the applicant, the application preparer, and the prime contractor and/or prime corrective action specialist required by §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement), unless otherwise approved by the executive director;

(2) the name, address, and telephone number of:

(A) each owner and operator of the tanks;

(B) the facility owner; and

(C) the owner of the land on which the tank system is located.

(3) the address and zip code of the facility where the release occurred;

(4) the location of the facility at which the corrective action was performed or is to be performed, identified with sufficient clarity and detail to enable a person unfamiliar with the site to locate it and reach it by automobile;

(5) any information required by the executive director under §334.307 of this title (relating to Technical Information Required), if not already submitted to the executive director;

(6) legible copies of invoices, providing a description of:

(A) any work performed;

(B) who performed the work;

- (C) where the work was performed;
- (D) the dates the work was performed;
- (E) the unit cost; and
- (F) the total amount paid;

(7) evidence that the amounts shown on the invoices for which reimbursement is requested have been paid in full by the claimant. The evidence must be accompanied by either:

(A) business receipts or invoices from the person who performed the work, indicating payments received;

(B) canceled checks;

(C) the certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full; or

(D) an affidavit signed by the person who performed the corrective action, affirming that the amounts which the applicant represents as being paid to him were paid in full;

(8) an estimate of the costs, if any, of corrective action which has not yet been completed, but for which reimbursement ultimately may be claimed. This estimate may be used for planning purposes only and will not be binding on the owner or operator for the purposes of payments from the Petroleum Storage Tank Remediation Fund; and

(9) any other information which the executive director may reasonably require.

(c) Provided the initial application is filed on or before the effective date of final rule adopted to succeed this interim subchapter, the applicant may file the application at any phase of corrective action. Payment will only be made at the following payment times:

(1) after the completion of a phase; or

(2) at points during the corrective action process agreed to by the executive director and the applicant.

(d) The executive director may require the applicant to supplement information already submitted or return the application without prejudice if the information is not sufficient to review the application.

(e) The applicant must update his application with any information not yet submitted to the executive director before processing or payment of claims at any stage begins.

(f) For purposes of this subchapter, the following are the phases of corrective action:

- (1) initial abatement measures and emergency actions phase;
- (2) preliminary site assessment phase;
- (3) comprehensive site assessment and remediation planning phase;
- (4) remediation phase; and
- (5) post-remediation phase.

Adopted October 11, 1995

Effective November 8, 1995

**§334.307. Technical Information Required.**

(a) The following information may be required by the executive director as part of any application for reimbursement under this subchapter:

- (1) any information which the executive director may require pursuant to Subchapter D of this chapter (relating to Corrective Action);
- (2) a detailed account of what corrective action has been taken, why specific actions were taken, when, by whom, and with what results;
- (3) an estimate of which other corrective action measures may be required to remediate the facility and the estimated time required to complete such measures.

(b) The executive director may require the applicant to supplement information already submitted or return the application without prejudice if the information is not sufficient to review the application.

Adopted October 11, 1995

Effective November 8, 1995

**§334.308. Allowable Costs and Restrictions on Allowable Costs.**

(a) Only those costs which are allowable costs pursuant to the terms of this section shall be subject to reimbursement under this subchapter.

(b) Allowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the commission, subject to the limitations prescribed by this section.

(c) Unless otherwise specified in subsection (g) of this section, allowable costs shall include, but not be limited to, the following:

(1) abatement of impacts and immediate threats of impact to human health, safety, and the environment, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release;

(2) removal of phase-separated product;

(3) temporary provision of an alternate water supply, provided that in order to be allowable, any water supplied on or after January 17, 1990, must be approved in advance by the commission or must be supplied in response to a written directive from the executive director issued before January 17, 1990. The executive director shall determine the length of time during which the cost of water supply will be allowable, the amounts of water which may be allowable, the uses for which water supply may be allowable, and other conditions of approval;

(4) collection and analysis of surface and subsurface soil and water, phase-separated product, and vapor samples;

(5) emplacement of observation and monitor wells;

(6) removal, storage, treatment, recycling, transport, and disposal of phase-separated product, sludges, vapors, contaminated soils, contaminated water and other wastes and contaminated articles, in accordance with applicable laws;

(7) removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

(8) tank system integrity testing in accordance with the methods prescribed by this chapter when such testing:

(A) is necessary to the performance of corrective action;

(B) has been specifically requested by the executive director on or after May 31, 1989; or

(C) has been specifically ordered by the commission on or after May 31, 1989;

(9) identification and testing of affected or potentially affected drinking water sources;

(10) design of plans for site assessment and remediation;

(11) acquisition, installation, startup, operation, and maintenance of remediation systems, including monitoring;

(12) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when necessary for performance of corrective action, and when removed after October 1, 1992, and before June 6, 1993;

(13) tank removal (as defined in this subchapter) and, transport, and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action), in accordance with applicable law when necessary for the performance of corrective action and performed before March 12, 1993;

(14) a portion of costs, as specified in this section, of tank removals, transport and disposal of the components of the underground or aboveground tank, including compliance with applicable requirements pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action), when necessary for the performance of corrective action and performed on or after March 12, 1993. Reimbursement of tank removals performed on or after March 12, 1993, shall be based on the volume of the tank removed and shall have a maximum reimbursable limit of \$8,000 per LPST site. For underground storage tanks having a volume of 5,000 gallons or less, the portion of reimbursable costs of removal for each such tank is \$1,000. For underground storage tanks having a volume of greater than 5,000 gallons, the portion of reimbursable costs of removal for each such tank is \$2,000;

(15) permanent abandonment in-place, of a tank system, including compliance with applicable requirements pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action), where abandonment in-place rather than tank system removal is deemed by the executive director to be necessary to avoid destruction of substantial or significant surface improvements and conducted before June 6, 1993;

(16) temporary relocation of utility structures when necessary to the performance of corrective action;

(17) preparation of technical reports required pursuant to the requirements of Subchapter D of this chapter (relating to Reporting of Releases and Corrective Action);

(18) the fair market value of access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(19) the reasonable value of necessary time spent by the applicant in planning and administering his own corrective action plan;

(20) performance of any corrective action measure which is specifically required by an order of the commission or a written request or confirmation of the executive director on or after September 1, 1987;

(21) state and federal sales taxes applicable to items which are otherwise allowable costs under this section; and

(22) any other costs determined by the executive director to be allowable in accordance with the provisions of this subchapter.

(d) The costs of abatement or corrective action taken in response to a release of hydraulic fluid from a hydraulic lift system are allowable costs in situations where:

(1) the hydraulic fluid was released from a hydraulic lift system located at a vehicle service and fueling facility where the hydraulic lift system was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) upon request by the executive director, the eligible owner or operator demonstrates that a release from the hydraulic lift system is not mixed with any substance except for petroleum products from a petroleum storage tank system, spent oil from a spent oil tank located at a vehicle service and fueling facility (or another substance contained in such spent oil tank), or another substance that was contained in the hydraulic lift system owned or operated by the person claiming reimbursement.

(e) The costs of abatement or corrective action taken in response to a release of spent oil from a spent oil tank are allowable costs under the following:

(1) the spent oil was released from a spent oil tank located at a vehicle service and fueling facility where the spent oil tank was used in conjunction with and contemporaneously with a vehicle service and fueling facility; and

(2) upon request by the executive director, the eligible owner or operator demonstrates that a release of spent oil is not mixed with any substance except for petroleum products from a petroleum storage tank system, or hydraulic fluid (or another substance that was contained in the hydraulic lift system) or another substance that was contained in the spent oil tank owned or operated by the person claiming reimbursement.

(f) The costs of excavation, disposal, or treatment of backfill material generated during the tank removal process, any additional sampling and reporting required under Subchapter D of this chapter (relating to Release Reporting and Corrective Action), required because of the disposal or treatment of the backfill material, are allowable costs where the concentration of constituents in the backfill material exceed a standard for which the executive director will permit the backfill material to

be returned to the original tank pit excavation and a prior written directive is obtained from the executive director prior to implementation.

(g) The following types of costs are those which will not be considered allowable costs under this subchapter:

(1) the cost of replacement, repair, and maintenance of affected tanks and associated piping;

(2) the cost of upgrading existing affected tanks and associated piping, including but not limited to, the costs of corrosion protection, release detection, spill and overfill protection, or any other upgrading required by Subchapter C of this chapter (relating to Technical Standards);

(3) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when removed prior to October 1, 1992, or on or after March 12, 1993;

(4) tank removal (as defined in this subchapter) and transport, and disposal of the components of the underground or aboveground tank, unless otherwise specified in subsection (c)(13) and (14) of this section;

(5) permanent abandonment in-place of a tank system, where abandonment in-place rather than tank system removal is deemed by the executive director to be necessary to avoid destruction of substantial or significant surface improvements when conducted on or after March 12, 1993;

(6) loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;

(7) decreased property values;

(8) bodily injury or property damage;

(9) attorney's fees;

(10) any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(11) the costs of making improvements to the facility beyond those that are required for corrective action;

(12) costs associated with corrective action performed for any purpose where no release of petroleum above action levels is discovered, except when the corrective action has been ordered by the commission;

(13) costs of compiling and storing records relating to costs of corrective action;

(14) costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334.322 of this title (relating to Subchapter H Definitions);

(15) costs of tank integrity testing when it is not specifically required by this chapter, requested by the executive director, or ordered by the commission;

(16) costs of any corrective action incurred by an owner or operator on or after the date that the executive director commences corrective action at the owner's or the operator's facility pursuant to §334.321 of this title (relating to Corrective Action by the Commission), unless authorized in writing by the executive director;

(17) costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad;

(18) any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste;

(19) interest on monies;

(20) the cost of abatement or corrective action taken in response to a release of a commingled substance as that term is defined in §334.322 of this title (relating to Subchapter H Definitions), excluding subsections (d) and (e) of this section; and

(21) the costs of the installation or construction of on-site equipment, structures or systems used in the extraction or management of wastes, except soil excavation, landfill disposal, well sampling, or monitoring, unless:

(A) the plans and specification for such equipment, structures, or systems are properly sealed by a professional engineer; and

(B) the construction and installation of such equipment, structures or systems are performed under the supervision of a registered professional engineer.

Adopted October 11, 1995

Effective November 8, 1995

**§334.309. Reimbursable Costs.**



(a) The commission will utilize the Reimbursable Cost Guidelines to evaluate the reimbursability of claims related to the cleanup of leaking petroleum storage tank sites.

(b) No cost shall be reimbursed unless it is also an allowable cost pursuant to §334.308 of this title (relating to Allowable Costs).

(c) For those activities that require preapproval, pursuant to §334.310(f) of this title (relating to Corrective Action), the commission will consider the preapproved cost or the actual cost, whichever is lower, as the reimbursable cost.

Adopted October 11, 1995

Effective November 8, 1995

**§334.310. Requirements for Eligibility.**

(a) In order for a person to be an eligible owner or operator under this subchapter each of the following requirements must be met.

(1) Such person must meet the other requirements of this chapter and must be:

(A) (No change.)

(B) any past owner or operator of a tank described in subparagraph (A) of this paragraph who performed corrective action on or after September 1, 1987, and on or before September 1, 2001, in response to a release of petroleum products from such tank;

(C) an owner of land who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is or was located on said land and who performed corrective action in response to a release of petroleum products from such tank;

(D) a lender who has a bona fide security or lienhold interest in or mortgage lien on any property where a tank described in subparagraph (A) of this paragraph is or was located and who performed corrective action in response to a release of petroleum products from such tank;

(E) a lender who forecloses and becomes the owner of property contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph, and who performed corrective action in response to a release of petroleum products from such tank; and

(F) an adjacent landowner who can clearly prove that the land has been contaminated by a release of petroleum products from a tank described in subparagraph (A) of this paragraph which is not located on said land, and who performed corrective action in response to a release of petroleum products from such tank, and either:

(i) performed emergency abatement actions by completing all the following:

(I) notifying the executive director within 24 hours of discovery that the emergency condition exists;

(II) notifying the local fire marshal (or state fire marshal if no local authority is available) within 24 hours;

(III) taking actions necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing phase-separated product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director. Restoration of site to preexisting conditions, cost of relocating utility structures, site assessment, and remediation are not considered part of emergency abatement activities. Any expenses incurred after 48 hours from commencement of the action must be approved by the executive director in writing; and

(IV) having the release and threat ultimately confirmed by the executive director; or

(ii) committed to undertake the entire cleanup of the leak and contamination from the tank on his property and on all other property by:

(I) obtaining prior approval in writing from the executive director;

(II) performing a site assessment to define the extent of the vertical and horizontal contamination at the time of the agreement;

(III) entering into a legal agreement with the owner of the tank whereby the adjacent landowner agrees to indemnify and hold harmless the owner, operator, and other affected landowners for any corrective action or third party liability effective from the date of the agreement; and

(IV) performing all corrective action in conformance with this chapter, and all other applicable rules and regulations. The applicable deductible for reimbursement under §334.312 (relating to Owner/ Operator Contribution) for cleanups undertaken by adjacent landowners under this subsection shall be the same as that applicable to the registered owner of the tank.

(2) An underground and aboveground storage tank installed prior to December 1, 1995, which is required to be registered pursuant §334.7 of this title (relating to Registration) or §334.127 of this title (relating to Registration for ASTs) must be registered with the executive director on or before

December 31, 1995, or the owner or operator is not eligible to receive reimbursement for that tank, except for:

(A) an owner or operator of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(B) a state or local governmental agency that discovers an unregistered storage tank in a right-of-way during construction; or

(C) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(3) The owner or operator of an underground and aboveground storage tank installed on or after December 1, 1995, must be registered with the executive director pursuant §334.7 of this title (relating to Registration) or §334.127 of this title (relating to Registration of ASTs) no later than the 30th day after the date the installation is completed to be eligible for reimbursement for such tank.

(4) All annual facility fees due since September 1, 1987, pursuant to §334.21 of this title (relating to Fee Assessment), and since September 1, 1989, pursuant to §334.128 of this title (relating to Annual Facility Fees) for all underground and aboveground storage tanks which they own or operate must be paid to the executive director, except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed. All fees which come due up until the time that reimbursement funds are released to the claimant must be paid.

(5) Any release on which a claim under this subchapter is based must be discovered and reported to the executive director on or before December 22, 1998, and must subsequently be confirmed by the executive director.

(b) Satisfaction of the eligibility criteria set forth in subsection (a) of this section shall constitute compliance for purposes of the Texas Water Code, §26.357(b)(2), for the purposes of this subchapter.

(c) The executive director may determine other persons to be eligible owners or operators in accordance with the standards of the Texas Water Code, §26.3571.

(d) Compliance with the Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and the Texas Water Code, §26.3571, does not mean that an eligible owner or operator has not violated a statute or a rule or order of the commission. Eligibility of an owner or operator under this subchapter does not preclude the issuance of an enforcement order or the assessment of administrative penalties against an eligible owner or operator.

(e) In no case will reimbursement be made under subsection (a)(1)(F) of this section for duplication of assessment and remediation activities involving the same contamination plume. There will be no reimbursement for adjacent landowner cleanup allowed under subsection (a)(1)(F) of this section for activities at a site which occur after the site has been designated for state lead cleanup under §334.84 of this title (relating to Corrective Action by the commission).

(f) Unless otherwise approved by the executive director, all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. For reimbursement of emergency, initial abatement measures and phase-separated product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 48 hours, then written approval will be required for all activities with the exception of continuous phase-separated product recovery.

Adopted October 11, 1995

Effective November 8, 1995

**§334.311. Determining the Number of Occurrences.**

(a) All releases at a facility which are discovered before or during the following phases of corrective action will be considered part of one release, subject to subsection (d) of this section:

- (1) the initial abatement measures and emergency action phase; and
- (2) preliminary site assessment phase.

(b) Releases discovered at a facility after the preliminary site assessment and remediation planning phase will be considered as separate occurrences from the releases detected earlier at the facility, subject to subsection (d) of this section.

(c) Regardless of when discovered, if the contamination within a facility is located in two or more areas and remediation of any area could be performed under separate and distinct corrective action plans, each distinct area within the facility will be considered as a separate occurrence, subject to subsection (d) of this section.

(d) In any situation, releases at a facility may be considered either as single or separate occurrences when doing either would:

- (1) make the most efficient use of the petroleum storage tank remediation fund; or
- (2) provide the most effective protection to the environment or best provide for public health and safety.

Adopted October 11, 1995

Effective November 8, 1995

**§334.312. Owner/Operator Contribution.**

(a) The executive director shall deduct from any amount claimed for reimbursement an amount of allowable costs equal to the greater amount applicable for the owner/operator contribution as described in this section.

(b) The owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$10,000;

(2) for a person who owns or operates a total of 100-999 petroleum storage tanks, \$5,000;

(3) for a person who owns or operates a total of 13-99 petroleum storage tanks, \$2,500;  
and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, \$1,000.

(c) If an owner or operator does not submit a site assessment in accordance with §334.78 of this title (relating to Site Assessment) before December 23, 1996, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$20,000;

(2) for a person who owns or operates a total of 100-999 petroleum storage tanks, \$10,000;

(3) for a person who owns or operates a total of 13-99 petroleum storage tanks, \$5,000;  
and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks, \$2,000.

(d) If an owner or operator's corrective action plan as required by §334.81 of this title (relating to Corrective Action Plan) is not approved by the commission before December 23, 1997, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$40,000;

(2) for a person who owns or operates a total of 100-999 petroleum storage tanks,  
\$20,000;

(3) for a person who owns or operates a total of 13-99 petroleum storage tanks,  
\$10,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks,  
\$4,000.

(e) If an owner or operator's corrective action plan as required by §334.81 of this title (relating to Corrective Action Plan) is not approved by the commission before December 23, 1998, or if the owner or operator has not met the goals specified in the plan to be met by December 23, 1998, the owner/operator contribution for each occurrence shall be as follows:

(1) for a person who owns or operates a total of 1,000 or more single petroleum storage tanks, \$80,000;

(2) for a person who owns or operates a total of 100-999 petroleum storage tanks,  
\$40,000;

(3) for a person who owns or operates a total of 13-99 petroleum storage tanks,  
\$20,000; and

(4) for a person who owns or operates a total of less than 13 petroleum storage tanks,  
\$8,000.

(f) An owner or operator of a site for which a closure letter has been issued on or after September 1, 1995, the owner/ operator contribution for each subsequent release occurrence shall be \$50,000.

(g) It shall be presumed for purposes of this section that a person owns:

(1) the number of tanks for which he is registered as the owner in the records of the executive director on the date that an administratively complete application is filed with the executive director; or

(2) the number of tanks actually owned by the eligible owner or operator on the date that an administratively complete application is filed with the executive director, whichever is greater.

Adopted October 11, 1995

Effective November 8, 1995

**§334.313. Review of Application by Executive Director.**

(a) An application for reimbursement or supplemented application filed under this subchapter shall be subject to review by the executive director:

(1) to determine if the information which is required to be submitted under this subchapter has been filed with the executive director; and

(2) to examine the substance of the application, including without limitation:

(A) the cost effectiveness and fiscal merits of the corrective action taken at the facility; and

(B) the technical merits of the corrective action taken at the facility;

(b) An application which does not contain all the information required by this subchapter may be returned by the executive director without prejudice. Return of the application by the executive director without prejudice does not prevent the applicant from filing another application for the same occurrence any time on or before the effective date of final rules adopted to succeed this interim subchapter.

(c) The executive director is not required to commence the substantive review of an application until he has received all of the information this subchapter requires the applicant to submit in order for the executive director to review a claim for payment.

(d) If, during the course of the substantive review, the executive director finds that additional information of the type required by this subchapter is needed to evaluate the application, he may require the applicant to provide such additional information. Further review of the application may be postponed until such information is received by the executive director.

(e) An application for reimbursement or supplemental application filed under this subchapter shall be subject to audit by the executive director.

(f) The executive director may not consider, process, or pay a claim for reimbursement for corrective action work begun after September 1, 1993, and without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid.

Adopted October 11, 1995

Effective November 8, 1995

**§334.314. Executive Director's Fund Payment Report.**

(a) Upon completion of the review of an application, the executive director shall prepare a fund payment report, indicating which of the applicant's claims the executive director believes should be reimbursed and which claims should not be reimbursed. If the executive director finds that any claim

should not be paid or not paid to the full amount claimed, he shall briefly state the reasons in his report. The executive director shall submit a copy of his report to the applicant.

(b) The applicant shall review the fund payment report and shall file a written response with the executive director within 45 days of receipt of the report. The response shall be on a form provided or approved by the executive director. The applicant may consent or object to all or any part of the report. If the executive director has not received a response from the applicant within 45 days from the date on which the applicant received the report, the following shall occur:

(1) all claims approved for reimbursement in the fund payment report shall be eligible for payment, provided a signed subrogation contract is submitted, when required;

(2) any claim addressed in the fund payment report shall be deemed satisfied in full;  
and

(3) the applicant will have waived his right to object to any item addressed in the fund payment report.

(c) Any item recommended for payment in the fund payment report to which the applicant objects shall not be eligible for payment until the executive director and the applicant agree on an amount for payment or until the commission orders payment in a prescribed amount, whichever occurs first.

(d) Any item recommended for payment in the fund payment report to which the applicant consents by filing a timely response to the fund payment report shall be eligible for reimbursement when the executive director receives the applicant's consent form, which may include the submission of a signed subrogation contract, when required. The consent of the applicant to any item recommended for payment shall mean that any claim covered by that item is considered satisfied in full.

(e) The executive director may in his discretion pay claims which he has approved for payment by sending payment with the fund payment report.

(f) In cases where there are two or more applicants filing claims for one occurrence, the executive director may make an equitable apportionment of the owner/operator contribution described in §334.312 of this title (relating to Owner/Operator Contribution).

Adopted October 11, 1995

Effective November 8, 1995

**§334.315. Protest of Fund Payment Report.**

(a) If he disagrees with any conclusion in the fund payment report, the applicant may file a protest with the executive director within 45 days of the date on which he receives the fund payment report.



(b) The protest must be in writing and signed by the applicant. It must be on a form prescribed or approved by the executive director. It must contain the following:

- (1) the name and address of the applicant;
- (2) the address of the facility in question and the executive director's facility number, if any;
- (3) a copy of the fund payment report which is the subject of the protest, or the application number which appears on the fund payment report; and
- (4) a clear statement of each item which the applicant disputes on the executive director's fund payment report and of any other complaint the applicant has relating to the claim.

(c) The protest shall be filed with the executive director by sending or delivering it to the office indicated in the fund payment report materials.

(d) The applicant and the staff of the executive director shall attempt to resolve informally any disputes over the fund payment report. If no resolution is reached by the staff and the applicant, the applicant may file a petition requesting the commission to grant relief. Within 45 days of receipt of written notification from the executive director that informal negotiations have ceased and the final informal fund protest meeting has been held, the applicant shall file a petition as specified in §334.316 of this title (relating to Formal Petition).

Adopted October 11, 1995

Effective November 8, 1995

**§334.316. Formal Petition.**

(a) The applicant shall file the petition with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and he shall serve a copy of the petition on the executive director.

(b) The petition shall set forth the relief which the applicant requests and shall contain the same information required for the protest, as prescribed in of §334.315(b) of this title (relating to Protest of Fund Payment Report).

Adopted October 11, 1995

Effective November 8, 1995

**§334.317. Hearing by the Commission.**

Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission.

Adopted October 11, 1995

Effective November 8, 1995

**§334.318. Recovery of Costs.**

The commission may initiate proceedings against any owner or operator of a petroleum storage tank for recovery of costs, as provided by the Texas Water Code, §26.355.

Adopted October 11, 1995

Effective November 8, 1995

**§334.319. Administrative Penalties and Other Actions.**

(a) Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of any statute, any rule of the commission or any order of the commission.

(b) Notwithstanding subsection (a) of this section, a lender, as defined in §334.322 of this title (relating to Subchapter H Definitions), is not liable as an owner or operator under this subchapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property. A lender is not liable under this subsection if:

(1) he or she has a security interest in a personal property or in a fixture that is not attached to the real estate or a lienhold interest on the real estate or fixture that is attached to the real estate as security for a loan to finance the acquisition or development of property, to finance the removal, repair, replacement, or upgrading of a regulated tank, or to finance the performance of corrective action in response to a release of a regulated substance from a tank, and the security or lienhold interest is in:

(A) an underground or aboveground storage tank;

(B) real property on which an underground or aboveground storage tank is located; or

(C) in any other personal property attached to or located on property on which an underground or aboveground storage tank is located; or

(2) the real or personal property described in paragraph (1)(A)-(C) of this subsection constitutes collateral for a commercial loan.

(c) A lender that exercises control over property described under subsection (b) of this section before foreclosure to preserve the collateral or to retain revenues from the property for the payment of debt, or that otherwise exercises the control of a mortgagee in possession, is not liable as an owner or operator under this subchapter unless that control leads to action that the executive director finds is

causing or exacerbating contamination associated with the release of a regulated substance from a tank located on the property.

(d) A lender that has a bona fide security or lienhold interest in any real or personal property as described under subsection (b) of this section and that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of that real or personal property is not liable as an owner or operator under this subchapter if the lender:

(1) removes from service any underground or aboveground storage tanks on the property. A tank is removed from service when the actions defined in §334.55(b) of this title (relating to Permanent Removal from Service) have been properly completed;

(2) undertakes, and with due diligence in a timely and persistent manner completes, corrective action in response to any release from those tanks. A lender acts with due diligence when the lender executes the corrective action in conformance with Subchapter D of this chapter (relating to Release Reporting and Corrective Action), or as otherwise directed by the executive director; and

(3) performs the removal and corrective action in accordance with all applicable commission rules.

(e) A lender acting under subsection (d) of this section must begin removal of the tank from service or corrective action within 90 days after the date on which the lender becomes the owner of the property.

(f) A corporate fiduciary or its agent is not liable in an individual capacity as an owner or operator under this chapter solely because:

(1) the corporate fiduciary or its agent has legal title to real or personal property for purposes of administering a trust or estate of which the property is a part; or

(2) the corporate fiduciary or its agent does not have legal title to the real or personal property but operates or manages the property under the terms of an estate or trust of which the property is a part.

(g) Subsection (f) of this section does not relieve a trust, estate, or beneficiary of any liability the trust, estate, or beneficiary may have as an owner or operator under this chapter.

Adopted October 11, 1995

Effective November 8, 1995

**§334.320. Responsibilities of Owners and Operators.**

(a) Nothing in this subchapter changes the responsibilities of an owner or operator of an underground or aboveground storage tank to respond to a release of regulated substances or to comply with any other requirements of statutes or the rules or orders of the commission.

(b) The owner and operator are obligated to pursue whatever actions are necessary to minimize any immediate impacts of threats to human health and safety and the environment and to stabilize the conditions caused by the release. When financially unable to pursue immediate abatement actions, the owner or operator shall notify the executive director immediately.

(c) No person shall knowingly submit false information to the executive director as part of any materials required to be submitted under this subchapter.

Adopted October 11, 1995

Effective November 8, 1995

**§334.321. Corrective Action by the Commission.**

(a) The executive director may undertake corrective action under this subchapter until September 1, 2001, in any case if:

(1) the owner or operator of the underground or aboveground storage tank is unwilling to take corrective action;

(2) the owner or operator of the underground or aboveground storage tank cannot be found;

(3) the owner or operator of the underground or aboveground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety or the environment;

(4) the executive director determines that more expeditious corrective action is necessary to protect the public health and safety or the environment from harm;

(5) the executive director considers it necessary to take corrective action to protect the public health and safety or the environment; or

(6) the owner or operator of the underground or aboveground storage tank demonstrates his/her financial inability to the executive director to take the corrective action necessary to protect the public health and safety or the environment.

(b) Except as provided in subsection (d) of this section, the executive director must provide notice of his intent to take corrective action to all owners and operators of petroleum storage tanks at a facility who are then currently registered in accordance with the registration requirements of this chapter before he undertakes corrective action at the facility.

(c) The notice must identify the property, state that the executive director intends to take corrective action at the facility, and state that costs incurred by the owner or operator from and after the date the executive director commences corrective action will not be allowable costs for reimbursement, unless authorized in writing by the executive director.

(d) The executive director may commence corrective action without prior notice if in his discretion immediate action is required to protect public health and safety or to protect the environment from harm. The executive director must provide the notice that he has commenced corrective action to all owners and operators of petroleum storage tanks at a facility who are then currently registered in accordance with the registration requirements of this chapter as soon as possible in the manner prescribed by subsection (c) of this section.

(e) No costs of corrective action incurred by an owner or operator at a facility on or after the date that the executive director commences corrective action at the owner's or the operator's facility are allowable for reimbursement under this subchapter, unless authorized in writing by the executive director.

Adopted October 11, 1995

Effective November 8, 1995

#### **§334.322. Subchapter H Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Abate** - To reduce in sufficient degree or intensity the source of the release or impacted area, and potential fire, explosion, or vapor hazards such that immediate threats to human health no longer exist. This includes the removal of all regulated substances from the aboveground or underground tank, and the removal of phase-separated products released from the tank.

**Aboveground storage tank** - A non-vehicular device with a capacity of more than 1,100 gallons, and all connecting piping both above- and below-ground, that is made of non-earthen materials; located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking basement, or vault; and designed to contain an accumulation of petroleum.

**Action level** - The concentration of constituents in the native soil or water at which corrective action will be required. Exceeding an action level warrants further assessment of the site, but does not mandate that site cleanup be required. Based upon the results of the site assessment, the need for site cleanup will then be determined and cleanup levels will be set. Action levels should not be used as cleanup levels; they are simply levels which signal the need for additional assessment.

**Adjacent landowner** - A person who owns legal title to land which is within reasonably close proximity to property where a regulated UST or AST is located whether or not the land is contiguous to the property containing the tank.

**Application preparer** - Any person responsible for preparing the application for reimbursement.

**Backfill** - The volume of materials or soils surrounding the underground storage tank and bounded by the ground surface, walls, and floor of the tankpit.

**Commingled substance** - A combination or mixture of a petroleum product and a non-petroleum product (excluding soil and/or water).

**Confirmed** - In the context of a release being confirmed by the executive director under this subchapter means that the executive director has determined that sufficient evidence exists to prove that a release of petroleum products has occurred from a petroleum storage tank subject to regulation under this chapter.

**Contract of subrogation** - A document of agreement between the executive director and the eligible tank owner and operator which authorizes the executive director to recover costs reimbursed from persons who performed corrective action activities at LPST sites.

**Corrective action** - Any assessment and remedial activities undertaken to investigate the extent of and remediate contamination. Unless otherwise approved by the executive director, written approval is required prior to implementation of any corrective action activity.

**Corrective action plan (remedial action plan)** - A detailed plan developed to address site remediation of soil, groundwater, or surface water contamination that provides for adequate protection of human health, safety, and the environment. The selection of the most effective and efficient remedial method will be dictated by the nature and location of the release, the site soils, hydrogeological conditions, and the required degree of remediation. The remedial method selection should take into consideration such factors as cost, time, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation "remedial action plan."

**Eligible operator** - Any person in control of or having the responsibility for the daily operation of a petroleum storage tank who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility).

**Eligible owner** - Any person who meets the eligibility requirements prescribed in §334.310 of this title (relating to Requirements for Eligibility--Interim Period) and who currently holds legal possession or ownership of a total or partial interest in a petroleum storage tank. For the purposes of this subchapter, where the actual ownership of the petroleum storage tank is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the petroleum storage tank is located shall be considered the petroleum storage tank owner, unless it can be shown by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the petroleum storage tank is owned by another. "Owner" does not include a person who holds an interest in a petroleum storage tank solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the petroleum storage tank. For purposes of this subchapter, if it can be demonstrated that a petroleum storage tank has been "out of operation" as that term is defined in §334.2 of this title (relating to Definitions) for a period of ten years, the tank shall be considered property of the owner of the surface estate (71st Legislature, 1989, Chapter 228, effective May 31, 1989).

**Emergency** - Any existing or potential fire, explosion, or vapor hazards which pose an imminent threat to human health and safety, or any imminent threat at the point of actual use to drinking water supplies actually being used.

**Hydraulic fluid** - Any regulated substance that is normally used in a hydraulic lift system.

**Initial abatement measures** - The mitigation of all existing or potential fire, explosion, or vapor hazards including the removal of phase-separated product to provide adequate protection of human health, safety, and the environment in emergency situations or other situations where emergency actions must be implemented to prevent further impacts to the environment.

**Lender** -

- (A) a state or national bank;
- (B) a state or federal savings and loan association or savings bank;
- (C) a credit union;
- (D) a state or federal government agency that customarily provides financing; or
- (E) an entity that is registered with the Office of Consumer Credit Commissioner pursuant to Chapter 7, Title 79, Revised Statutes (Texas Civil Statutes, Article 5069-7.01, et seq) if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

**Petroleum product** - A product obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

**Petroleum storage tank** -

- (A) Any one or combination of aboveground storage tanks and all connecting piping that contain petroleum products and that are regulated by the commission; or
- (B) Any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

**Prime contractor** - Any natural person, firm, or any entity responsible for the contracting of any corrective action services.

**Prime corrective action specialist** - A natural person, consulting firm, or any entity engaging in corrective action services, or acting as coordinator of others engaged in corrective action services.

**Spent oil** - A regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

**Tank removal** - The physical removal of an underground storage tank from the subsurface. Tank removals include removal and replacement of surface material, excavation and disposal of backfill material, tank removal and disposal, backfilling and compaction of excavation, and any other activities typically associated with the tank removal process.

Chapter 334

Underground and Aboveground Storage Tanks

**Vehicle service and fueling facility** - A facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

Adopted October 11, 1995

Effective November 8, 1995



Texas Natural Resource  
Conservation Commission  
Chapter 334  
Underground and Aboveground Storage Tanks

Page 33

Amendment to: §§334.301-334.322  
Date Adopted: October 11, 1995  
Date Filed with the Secretary of State: October 18, 1995  
Date Effective: November 8, 1995